

In the Matter of Merchant Mariner's Document No. Z-772837 and all other Seaman Documents  
Issued to: JULIUS WILSON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1154

JULIUS WILSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 June 1959, an Examiner of the United States Coast Guard at Baltimore, Maryland suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleged that while serving as a messman on the United States SS PIONEER ISLE under authority of the document above described, on or about 6 October 1958, Appellant assaulted and battered a shipmate by stabbing him with a knife while ashore at Sydney, Australia.

At the hearing, Appellant entered a plea of not guilty. He testified that the other seaman attacked Appellant with a knife and fell on it when Appellant attempted to disarm him.

The only evidence introduced by the Investigating Officer concerning this incident was an entry in the ship's Official Logbook and a copy of a Consular Report by the American Consul at Sydney, Australia.

The logbook entry is not adequate to prove the alleged offense because it is clearly written by the ship's Master to state what was reported to him about the stabbing which took place ashore. There is no indication that the Master intended this entry as any more than an explanation as to why the two seamen left the ship --- one was arrested and the other hospitalized.

The American Consul in his report states that Appellant claimed the same defense before his trial at Sydney as he testified to at the Coast Guard hearing, and that Appellant was only persuaded to change his plea to guilty on the assurance that he would be deported immediately after sentencing by the court. The report states that Appellant was fearful of a long imprisonment in Australia if he were convicted. Consequently, Appellant pleaded guilty to the charge of "malicious wounding," he was sentenced, and promptly deported.

Ordinarily, evidence of conviction by a foreign court is sufficient to make out a prima facie case of the matters adjudged and is conclusive unless some reason is shown for impeaching it. Hilton

v. Guyot (1895), 159 U. S. 113, 228. In Appellant's case, the American Consul makes it clear that the conviction was based on the plea of guilty which was induced by the promise of freedom and the fear of imprisonment. Under these circumstances, it is my opinion that the conviction does not constitute substantial evidence to prove the similar offense alleged in the specification.

Additional factors in Appellant's favor to consider are that he consistently claimed self-defense and Examiner did not give any logical reason for rejecting Appellant's testimony to this effect.

Although not inadmissible as hearsay, the Consular Report was not authenticated by the Consul or Vice-Consul as required by 28 U.S.C. 1740 in order for it to be given equal weight with the original.

The testimony of the injured seaman, who had an address in Baltimore, should have been obtained or the record should have shown that every effort was made to locate him.

For these reasons, the findings that the specification was proved is reversed. The charge and specification are dismissed.

#### ORDER

The order of the Examiner dated at Baltimore, Maryland, on 16 June 1959, is VACATED.

A. C. Richmond  
Vice Admiral, U. S. Coast Guard  
Commandant

Dated at Washington, D. C., this 15th day of March, 1960.